IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 106 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

AMBA EXHIBITORS

Appearance:

1. INCOME TAX REFERENCE No. 106 of 1991
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment years 1984-85 and 1985-86 :-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the outstanding amount of entertainment tax liability of the last week of, which was duly paid within the time prescribed under the provisions of entertainment tax laws and before the time prescribed u/s.139(1) of I.T. Act, 1961 cannot be validly added as income in the aforesaid two years ? "

2. We have heard Mr MR Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of the Apex Court in Allied Motor's case, 224 ITR 677 taking the view that the proviso to Section 43B inserted with effect from 1.4.1988 was retrospective in operation with effect from 1.4.1984.

4. Applying the ratio of the aforesaid judgment and in view of the finding of fact given by the Tribunal that the amount of entertainment tax collected by the assessee during the relevant period was duly deposited within the time prescribed under the provisions of the Entertainment Tax Act, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-